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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re N.A., a Person Coming Under the
Juvenile Court Law.

H046778
(Santa Cruz County
Super. Ct. No. 17JU00245)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

D.A.,

Defendant and Appellant.

Appellant D.A. (the mother) appeals from the juvenile court's order terminating her parental rights to her son N.A. (Nick) and selecting adoption as Nick's permanent plan. She contends that the juvenile court should have found that the parental relationship and sibling relationship exceptions precluded termination of her parental rights. We reject her contentions and affirm the court's order.

I. Background

On March 26, 2017, the mother jumped out of a moving truck with Nick's one-year-old half sibling F.M. in her arms. The mother's boyfriend, W.M., F.'s father,

was driving the truck, and the two were arguing when the mother jumped out of the truck. Four-year-old Nick was in the truck and observed this incident. He reported that W.M. had pushed the mother out of the truck. Both the mother and W.M. were under the influence of methamphetamine at the time of the incident. F. suffered lacerations to his skull and ear that required stitches.

As a result of this incident, the two boys were taken into protective custody, and a Welfare and Institutions Code section 300¹ petition was filed in Monterey County alleging that the mother had failed to protect Nick (§ 300, subd. (b)) and had left Nick with no provision for support (§ 300, subd. (g)).² The mother was in jail, and F.'s father was homeless. The mother was convicted of causing great bodily harm to a child, granted probation, and ordered to serve six months in jail. Both boys were detained and placed in separate foster homes while a search was undertaken to find a home where they could be placed together.

Although the mother admitted that she used methamphetamine, she insisted that she did not have a substance abuse or domestic violence problem and could stop using drugs at any time. W.M. had a long history of substance abuse. The mother's child welfare history dated back to 2012, the year Nick was born. There had been 17 prior referrals, primarily for substance abuse and domestic violence. In 2015, the mother and Nick "were found living in an unsanitary storage unit" in Monterey County, and Nick was taken into protective custody. In January 2016, dependency petitions were filed in Ventura County due to substance abuse and domestic violence issues; Nick and F. were declared dependents and returned to mother's care with family maintenance services. The Ventura County case was dismissed in August 2016.

¹ Subsequent statutory references are to the Welfare and Institutions Code.

² The identity and whereabouts of Nick's alleged father were unknown at that time. His alleged father is not a party to this appeal.

At the time Nick was detained in March 2017, he was overweight, suffered from asthma and developmental delays, and had numerous cavities. He was prone to lengthy tantrums and had trouble expressing his feelings. Sibling visits were awkward initially, and the boys did not naturally gravitate toward each other.

At the uncontested jurisdictional hearing in May 2017, the court sustained the petition and declared Nick a dependent. The mother was granted reunification services with supervised visitation once a week. In late May 2017, the boys were moved to a home in Santa Clara County with relatives of W.M. These relatives were willing to “provide a permanent plan” for the boys if the parents did not reunify with the boys. The boys “thriv[ed]” in this placement. The caregivers reported that Nick “enjoys playing with his younger brother” The mother was released from jail in June 2017.

The case was transferred to Santa Cruz County in July 2017 because the mother and W.M. were both living in Santa Cruz County. The mother was progressing on her case plan. She was consistently visiting Nick, and the Santa Cruz County Human Services Department (the Department) reported that “the quality of those visits have [*sic*] been strong.” In October 2017, the mother reported an incident of domestic violence between her and W.M. At the November 2017 six-month review hearing, reunification services were continued.

Between January and May 2018, the mother repeatedly tested positive for drug use. She did not visit the boys in March or April 2018. The mother stopped participating in drug testing. Overall, her “visits [became] inconsistent,” and her phone contact with the boys was also inconsistent. The “dynamics” between the mother and W.M. continued to pose risks to the boys. Nick continued to do well in his placement, and he was reported to be “a very active and verbal 5-year-old.”

The Department initially recommended that services be terminated at the 12-month review, but it later changed its recommendation to a continuation of reunification services. At the July 2018 12-month review hearing, the court continued

reunification services to the mother. The mother continued to have one supervised visit per week with Nick. She soon transitioned to “loosely supervised visits,” then unsupervised visits, and finally overnight visits.

The 18-month review was originally scheduled for September 2018, and the Department initially recommended that Nick be returned to the mother with family maintenance services. Nick was having overnight visits with the mother, and an extended visit was contemplated to assess his “safety” in the mother’s care. It was noted, however, that Nick “has experienced confusion and sadness, an increase in negative behavior towards his brother, and, a pattern of overeating since [W.M.] declined visiting with him.”

In late September 2018, the Department changed its recommendation. It recommended that F. be returned to parental custody and placed with W.M., but that the mother’s reunification services be terminated as to Nick and a permanency planning hearing be scheduled. The Department’s primary concern was the continued domestic violence that was placing Nick at risk. After a brief reconciliation, the mother and W.M. had terminated their relationship and were “no longer on speaking terms” During a late September visit, the mother’s boyfriend assaulted W.M., possibly in the presence of both boys. Although the mother’s boyfriend had a drinking problem, the mother anticipated that he would be providing child care for the boys while she was at work. At one point, the mother told the Department that she thought it best for the children to remain with their caregivers. She continued to have weekly unsupervised visits with Nick.

The mother contested the Department’s recommendation that services be terminated. At the October 2018 18-month review hearing, the mother briefly testified that she wanted Nick returned to her care, in part so that the two boys “can see each other more frequently than just once a week.” The court terminated services and set a

permanency planning hearing for February 2019. Visitation was reduced to a single supervised visit once a month.

Incidents between the mother and W.M. involving alcohol abuse and domestic violence in October 2018, December 2018, and January 2019 continued to raise concerns about the boys' safety. The mother missed her November 2018 visit with Nick, but she did visit him in December 2018 and January and February 2019. F. joined her for those visits, and the visits were "observed to be positive with no issues reported." Nick and F. sometimes played together during these visits.

In early February 2019, the Department submitted an initial recommendation that the court temporarily select "Planned Permanency Living Arrangement with a goal of adoption" because the relative caregivers wanted more time to "explore permanency options." The Department reported that Nick "looks to his relative caregivers for safety, love, guidance and nurturance," and they provide him "with much needed stability and safety." The caregivers were committed to adopting Nick and providing "a safe, loving and nurturing home" for him, and their only uncertainty was "which permanency option is best for [Nick]" in light of "the progress [the mother] is demonstrating" in connection with F. The caregivers supported continuing contact between Nick and both the mother and F.

The Department also reported: "[Nick] is doing really well in therapy and is able to receive support with all of the changes that he is having to adjust to. Although [he] is happy and bonded with his caregivers he also loves his mother and brother and wants them to remain in his life. [He] is experiencing confusion and worry with regards to the possibility of being adopted as he doesn't want to lose his mother and brother. His therapist as well as his caregivers are providing much needed support to [him] as he moves through this transition." Nick's therapist reported that the caregivers had "done an amazing job" of working with Nick to overcome "the trauma he has experienced"

Six-year-old Nick stated that he “‘wants to live with’” the caregivers but also said he “wants to live with his brother and mother.” His court appointed special advocate reported that Nick was “very mature for his age,” missed his mother and brother, and “worries a lot about his younger brother and what will happen to him now that they are separated.” Nick no longer saw his brother on every visit with the mother because F. was placed with W.M. Nick was doing well in school and had many close friends in his class.

The caregivers very soon decided that adoption was the best plan for Nick, and the Department changed its recommendation to termination of parental rights and selection of adoption as Nick’s permanent plan. The caregivers were “very open to continued contact” between Nick, the mother, and F.

The mother’s section 388 petition seeking additional reunification services was denied without an evidentiary hearing. In March 2019, another incident of potential domestic violence involving the mother, her boyfriend, and W.M. caused emotional trauma to F.

At the March 2019 hearing, the mother testified that Nick was always very happy to see her at visits and “pays attention to his brother for five minutes, and then he’s back” to paying attention to her. She testified that she always brought F. to the monthly visits because “that’s the only time the brothers get to see each other is once a month.” The mother testified that she had telephone contact with Nick “[e]very two to three days.”

The court asked the parties to focus their arguments on the parental and sibling relationship exceptions. The Department noted that Nick was “probably always gonna worry about his mother and brother,” but adoption would allow him to stop worrying about his own safety. It argued that Nick’s “somewhat parentified relationship” with the mother was not beneficial to him. Nick’s trial counsel observed that consistent positive visitation was not enough to merit application of the parental relationship exception because Nick’s “stability and security and permanence” were more important. The mother’s trial counsel argued that Nick would suffer detriment if parental rights were

terminated because he would benefit from a continuing relationship with his mother and his brother.

The court found that the mother had consistently visited Nick. However, the court also found that the mother had not met her burden of establishing that the benefit to Nick of maintaining the parental and sibling relationships “outweighs the benefit of the permanency he can achieve through adoption.” The “level of anxiety” that the mother exposed Nick to, even as late as recent visits, was harmful to him. “[Y]es, he loves his mother, but he’s worried about her, as opposed to him feeling protected by his mother, and in the relationship he has with his current prospective adoptive parents, the relative caretakers who are caring for him now, he has expressed that he feels safe, he feels loved, he feels cared for, he looks to them for support. So I do find that mother has not established that the benefit of maintaining that parent-child relationship with her outweighs the benefit of adoption. [¶] And the same with respect to the sibling relationship exception.” While the two boys had “a strong bond,” Nick’s primary feeling was one of worry and concern about his brother’s safety. The court terminated parental rights and selected adoption as Nick’s permanent plan. The mother timely filed a notice of appeal from the juvenile court’s order.

II. Analysis

“Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds ‘a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. [¶] . . . [¶] (v) There would be substantial interference with a child’s sibling relationship’ (§ 366.26, subd. (c)(1)(B).) ‘[T]he burden is on the party seeking to establish the

existence of one of the section 366.26, subdivision (c)(1) exceptions to produce that evidence.’” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*).)

“[T]he existence of a beneficial parental or sibling relationship . . . is a factual issue [so] the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court’s determination.” (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.) “The other component of both the parental relationship exception and the sibling relationship exception is the requirement that the juvenile court find that the existence of that relationship constitutes a ‘*compelling reason* for determining that termination would be detrimental.’ (§ 366.26, subd. (c)(1)(B), italics added.) A juvenile court finding that the relationship is a ‘compelling reason’ for finding detriment to the child is *based* on the facts but is not primarily a factual issue. It is, instead, a ‘quintessentially’ discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.] Because this component of the juvenile court’s decision is discretionary, the abuse of discretion standard of review applies.” (*Id.* at p. 1315.)

The juvenile court found that the parental relationship exception did not apply in this case because, even though the mother had maintained regular, positive visitation with Nick, the benefit to Nick of being adopted outweighed the detriment to him of terminating the mother’s parental relationship with him.

“‘The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.’ [Citation.] ‘Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation.

[Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.’ [Citation.] Evidence of ‘frequent and loving contact’ is not sufficient to establish the existence of a beneficial parental relationship.” (*Bailey J., supra*, 189 Cal.App.4th at pp. 1315-1316.)

Six-year-old Nick spent four years of his life in the mother’s custody, but those four years were filled with turmoil. Two prior dependency cases arose from the mother’s neglect. Her substance abuse, which she never was able to avoid for a significant period of time, led to her failure to provide a stable and sanitary home for Nick, and her poor judgment repeatedly exposed young Nick to traumatic and dangerous domestic violence. This dependency case was initiated after four-year-old Nick witnessed his mother either being pushed or jumping out of a moving truck with his little brother in her arms. When he was taken into protective custody, Nick was emotionally traumatized and physically debilitated. He was sorely in need of a stable, loving, and supportive home. Although the mother has maintained a loving relationship with Nick, his emotional attachment to her cannot be characterized as positive when her presence in his life has continued to cause him confusion and worry over her safety and that of his little brother. Under these circumstances, the juvenile court did not abuse its discretion in deciding that the benefit of adoption outweighed the detriment to Nick of the termination of the mother’s parental relationship with him.

We reach a similar conclusion with regard to the sibling relationship exception. “The sibling relationship exception applies where the juvenile court finds that ‘substantial interference with a child’s sibling relationship’ is a ‘compelling reason’ to conclude that adoption would be detrimental to the child. In making this determination, the court should take into consideration ‘the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the

child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.' (§ 366.26, subd. (c)(1)(B)(v).)" (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1317.)

Nick and his little brother were raised together for much of his little brother's life. His brother was one year old when they were taken into protective custody, but the boys were reunited a couple of months later and lived together with the caregivers for more than a year before F. was placed with W.M. in September 2018. Nick and F. lived together for a total of about half of Nick's life. However, at the time of the section 366.26 hearing, the boys had been living apart for about six months and had had only a few visits. The boys certainly had a sibling bond, and ongoing contact between them would be beneficial to Nick. Yet their joint history was one of neglect and trauma. The juvenile court could reasonably conclude that any detriment from the severance of Nick's sibling relationship with F. did not outweigh the benefit to Nick of adoption into a stable, loving, permanent home where he would no longer be neglected or traumatized. The fact that the caregivers who intended to adopt Nick welcomed contact between Nick and F. and were in fact relatives of F. lessened the risk of detriment to Nick. (*In re D.O.* (2016) 247 Cal.App.4th 166, 176.) It is also notable that F. was not placed with the mother, so the severance of the parental relationship could not be expected to have as much impact on Nick's relationship with F. as it would have if F. lived fulltime with the mother. We can find no abuse of discretion in the juvenile court's determination that the sibling relationship exception did not apply in this case.

III. Disposition

The juvenile court's order is affirmed.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.

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